FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 385/2006
(Anil Vitthalrao Bansod **VERSUS** Ku.Priyatama Sukhdeo Bhagat **)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri Mirza, Advocate for the appellant.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 13th August, 2007.

Heard the learned counsel for the appellant.

The appellant is the original defendant. A suit was filed by the plaintiff for grant of the relief of specific performance of contract of sale of property and in the alternative for refund of the earnest amount.

The defendant denied the claim of the plaintiff and pleaded that there was no agreement of sale executed between the plaintiff and the defendant. It was further pleaded that the defendant did not even know the plaintiff and was not acquainted with her. The defendant pleaded that the suit filed by the plaintiff was a false one and the suit was liable to be dismissed.

On the aforesaid pleadings of the parties, the trial Court framed the necessary issues. The plaintiff

examined herself and examined the person who had scribed the agreement of sale. The plaintiff also examined the handwriting expert to prove that the defendant had signed on the agreement of sale though he had denied his signature. The defendant examined himself.

The trial Court held that the plaintiff had proved that the defendant had executed the agreement of sale dated 20.07.1998 and the plaintiff had paid an earnest amount of Rs.10,160/- to the defendant. The Court held that the plaintiff was ever ready and willing to perform her part of the contract and had proved that the defendant had avoided to perform his part. The trial Court, however, refused to grant a decree for specific performance of contract and granted the alternative prayer of the plaintiff for refund of the earnest amount.

The defendant did not challenge the judgment passed by the trial Court. The plaintiff, however, filed an appeal against the dismissal of her claim so far as the claim for grant of specific performance of contract was concerned. The appellate Court allowed the appeal by the judgment dated 04.04.2005 and decreed the suit of the plaintiff for grant of specific performance of contract. The

appellate Court held that the trial Court ought to have decreed the suit of the plaintiff for grant of specific performance of contract, more so when the trial Court had not recorded a single reason for denying the relief of specific performance of contract to her, specially when the plaintiff had proved the execution of the agreement of sale and the fact that she was ready and willing to perform her part of contract.

The judgment passed by the appellate Court is challenged in this second appeal. The learned counsel for the appellant submitted that the Courts were not justified in holding that the defendant was a signatory to the agreement of sale dated 20.07.1998. The counsel for the appellant submitted that the agreement of sale was merely marked as Article 'A', and therefore, it cannot be said that the plaintiff had proved the execution of agreement of sale dated 20.07.1998.

I have perused both the judgments and the oral evidence tendered by the parties, as a copy of the same is made available,by the counsel for the appellant. It appears from the evidence tendered by the plaintiff and her two witnesses that the plaintiff had duly proved the execution of the agreement of sale dated 20.07.1998. Though the document was

marked as Article 'A' during the examination-in-chief of the plaintiff, the plaintiff further examined the scribe of the document and the handwriting expert as the defendant had disputed his signature on the agreement of sale.

Both the Courts have concurrently held that a combined reading of the evidence of the plaintiff and her two witnesses clearly showed that the plaintiff and the defendant had executed an agreement of sale dated 20.07.1998. The Courts have recorded a clear finding of fact that the defendant had signed on the agreement of sale and the plaintiff was ready and willing to perform her part of the contract, whereas, the defendant failed to perform his part. Since the trial Court had not recorded a single reason for not granting a decree for specific performance of contract, the appellate Court rightly granted a decree for specific performance of contract by observing that there was no reason whatsoever for the trial Court to deny a decree for specific performance of contract to the plaintiff. The decree for specific performance of contract cannot be refused merely because the plaintiff had made an alternative prayer for refund of the earnest amount. The appellate Court has, therefore, very justly granted the prayer for a decree

for specific performance of contract.

Since no substantial question of law arises for consideration in this second appeal, the same is dismissed with no order as to costs.

JUDGE

APTE